

2. Alternatively, even if Brightstar's furlough of Plaintiff did cause a diminution of his salary, Plaintiff failed to exercise the remedy provided for by his employment agreement to redress such a diminution. Specifically, Plaintiff was required to provide timely written notice to Brightstar of such a diminution of salary and allow Brightstar the opportunity to cure. Then, if Brightstar failed to cure, Plaintiff was required to resign his employment within 90 days from the initial existence of the diminution. Plaintiff expressly admitted in discovery that he did not give written notice to Brightstar of any diminution of salary or the right to cure. Plaintiff also admitted that he did not resign in accordance with the employment agreement. Thus, Plaintiff cannot establish a material breach of, or entitlement to any relief under, the employment agreement based upon the alleged diminution of his salary.

3. Finally, Plaintiff is not entitled to recover any damages in this action. Plaintiff seeks to recover as damages the alleged remaining salary under the employment agreement from the date he was placed on furlough through April 9, 2022 (*i.e.*, the fourth anniversary of the agreement date). He is not entitled to such damages. First, because Plaintiff performed no work for Brightstar during his furlough period, under the FLSA, he is not entitled to be paid any salary for that period. Second, on December 11, 2020, while Plaintiff was still on furlough, Brightstar terminated his employment "without Cause" and released him from his restrictive covenants. Thus, under the express terms of the employment agreement, Plaintiff is entitled to no further compensation, salary, or benefits after that date.

4. In further support of this motion, Brightstar submits and relies upon the following:

a. Excerpts from the transcript of the deposition of Plaintiff, Tyler Miller, taken by Brightstar on December 22, 2020, attached hereto as collective **Exhibit A**;

b. Plaintiff's responses to Brightstar's first set of requests for admission, a copy of which is attached hereto as **Exhibit B**;

c. Second Declaration of Alison Borkin, Vice President, Human Resources-Americas, of Brightstar Corp., filed contemporaneously herewith;

d. Brightstar's statement of undisputed material facts, filed contemporaneously herewith; and

e. Brightstar's memorandum in support of this motion, filed contemporaneously herewith.

WHEREFORE, Brightstar respectfully requests that the Court enter an Order granting summary judgment in favor of Brightstar and dismissing Plaintiff's Amended Complaint with prejudice.

Respectfully submitted,

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